

ASSEMBLY, No. 2597

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

SYNOPSIS

Permits construction of electric transmission and distribution lines on certain areas of preserved farmland under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the construction of electric transmission and
2 distribution lines and supplementing P.L.1983, c.32 (C.4:1C-11
3 et seq.).

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. a. Notwithstanding any provision of the “Agriculture
9 Retention and Development Act,” P.L.1983, c.32 (C.4:1C-11 et
10 seq.), any other law, rule, or regulation concerning the preservation
11 of farmland, or any development easement held for the purpose of
12 farmland preservation, to the contrary, a person who owns
13 preserved farmland may dispose of or divert a portion of that land
14 to an electric public utility for the construction and operation of an
15 electric transmission or distribution line, provided:

16 (1) the portion of preserved farmland subject to disposal or
17 diversion is already subject to an existing utility easement held by
18 the electric public utility for the operation of an existing electric
19 transmission or distribution line;

20 (2) the portion of preserved farmland to be disposed of or
21 diverted pursuant to this section is adjacent to the existing utility
22 easement held by the electric public utility, except as provided in
23 subsection d. of this section;

24 (3) the electric public utility obtains the determination from
25 PJM Interconnection, L.L.C., or the Board of Public Utilities
26 required by subsection b. of this section;

27 (4) the electric public utility provides compensation to the
28 owner of the preserved farmland and to the owner of the
29 development easement as provided in subsection e. of this section;

30 (5) the portion of preserved farmland disposed of or diverted
31 pursuant to this section is the minimum width necessary to meet
32 federal and State safety standards;

33 (6) the construction and operation of the electric transmission or
34 distribution line will not interfere with use of the remaining area of
35 the preserved farmland for agricultural production;

36 (7) construction and operation of the electric transmission or
37 distribution line will not have an adverse impact upon the soils,
38 water resources, air quality, or other natural resources of the
39 preserved farmland or the surrounding area;

40 (8) the electric public utility obtains all other necessary permits
41 and approvals that may be required by federal, State, or local law,
42 rule, regulation, or ordinance;

43 (9) upon completion of construction of the electric transmission
44 or distribution line, the electric public utility restores all land
45 disturbed by the construction as nearly as possible to its pre-
46 construction condition, and returns all land not necessary for the
47 operation of the electric transmission or distribution line to the
48 owner for agricultural use; and

1 (10) the portion of preserved farmland not subject to the disposal
2 or diversion shall remain an agriculturally viable parcel, in the
3 farmland preservation program, and be subject to all the
4 requirements of the “Agriculture Retention and Development Act.”

5 b. An electric public utility seeking to construct an electric
6 transmission or distribution line on preserved farmland pursuant to
7 this section shall first obtain a determination from PJM or the Board
8 of Public Utilities, as appropriate, that the electric transmission or
9 distribution line would: (1) fulfill a compelling public need by
10 mitigating a hazard to the public health, safety, or welfare; or (2)
11 yield a significant public benefit by improving the delivery of
12 essential services to the public.

13 c. A person seeking to dispose of or divert a portion of
14 preserved farmland pursuant to this section, together with the
15 electric public utility, shall apply for and obtain the approval of the
16 State Agriculture Development Committee, in a form and manner as
17 prescribed by the committee. The committee, in consultation with
18 the owner of the development easement, if different from the
19 committee, shall grant the approval if: (1) it finds that all of the
20 requirements of subsection a. have been or will be met; and (2) after
21 weighing all of the competing public interests presented by the
22 proposed electric transmission or distribution line, the committee
23 finds that the public benefit of the project outweighs any impacts to
24 the preserved farmland. As a condition of its approval, the
25 committee shall establish the compensation to be paid by the
26 electric public utility to the owner of the development easement
27 pursuant to subsection e. of this section.

28 d. The committee, in consultation with the owner of the
29 development easement, if different from the committee, and the
30 Department of Environmental Protection and the Board of Public
31 Utilities, may approve the construction of an electric transmission
32 or distribution line on a portion of preserved farmland that is not
33 adjacent to the existing utility easement held by the electric public
34 utility upon a demonstration of hardship by the electric public
35 utility. The committee may also approve the realignment of an
36 existing electric transmission or distribution line upon a showing of
37 hardship by the electric public utility.

38 e. The electric public utility may negotiate with the owner of
39 the preserved farmland the reimbursement to be paid for the
40 disposal or diversion of land pursuant to this section. Such
41 compensation shall, at a minimum, equal the fair market value of
42 the disposal or diversion of land as if the land were not designated
43 as preserved farmland. The committee shall establish the
44 reasonable reimbursement to be paid by the electric public utility to
45 the owner of the development easement on the preserved farmland,
46 which may include eligible replacement land, farmland
47 improvements on the remaining parcel of preserved farmland or on
48 other preserved farmland within the same municipality or county,

1 dedicated funds for the acquisition of farmland preservation
2 development easements, or other compensation to be reasonably
3 established by the committee. Any compensation approved by the
4 committee shall ensure that there is no net loss of preserved
5 farmland in the State caused by the disposal or diversion.

6 f. Nothing in this section shall modify or in any way affect:
7 (1) any agreement or memorandum of understanding between the
8 electric public utility and the committee or the Board of Public
9 Utilities; or (2) any other existing utility easement held by an
10 electric public utility for the operation of an electric transmission or
11 distribution line.

12 g. The committee shall adopt, pursuant to the “Administrative
13 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), such rules
14 and regulations as may be necessary for implementation of this
15 section.

16 h. As used in this section:

17 “Agriculturally viable parcel” means an agriculturally viable
18 parcel as defined in the State Agriculture Development Committee
19 policy entitled “Division of Permanently Preserved Farmland,” and
20 specifically, a parcel capable of sustaining a variety of agricultural
21 operations that yield a reasonable economic return under normal
22 conditions solely from the parcel’s agricultural output.

23 “Electric public utility” means a public utility, as that term is
24 defined in R.S.48:2-13, that transmits and distributes electricity to
25 end users.

26 “Existing utility easement” means a utility easement existing on
27 preserved farmland on the date of enactment of P.L. ,
28 c. (C.) (pending before the Legislature as this bill).

29 “Operation” means the route maintenance and operation of an
30 electric transmission or distribution line, including vegetation
31 management, rehabilitation, preservation, reconstruction, repair, or
32 upgrade of the utility lines, rights-of-way, or systems that distribute
33 or transmit power, by an electric public utility.

34 “PJM Interconnection, L.L.C.” or “PJM” means the same as that
35 term is defined in section 3 of P.L.1999, c.23 (C.48:3-51).

36 “Preserved farmland” means land on which a development
37 easement was conveyed to, or retained by, the committee, a county
38 agriculture development board, a county, a municipality, or a
39 qualifying tax exempt nonprofit organization pursuant to the
40 provisions of section 24 of P.L.1983, c.32 (C.4:1C-31), section 5 of
41 P.L.1988, c.4 (C.4:1C-31.1), section 1 of P.L.1989, c.28 (C.4:1C-
42 38), section 1 of P.L.1999, c.180 (C.4:1C-43.1), sections 37 through
43 40 of P.L.1999, c.152 (C.13:8C-37 through C.13:8C-40), or any
44 other State law enacted for farmland preservation purposes.

45 “Right-of-way” means the same as that term is defined in section
46 1 of P.L.1969, c.182 (C.48:3-17.9).

47 “Utility easement” means privileges essential or appurtenant to
48 the enjoyment of a right-of-way by an electric public utility.

1 2. This act shall take effect immediately.

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STATEMENT

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6 This bill would permit the construction of electric power lines on
7 certain areas of preserved farmland under certain circumstances.

8 Specifically, under the bill, a person who owns preserved
9 farmland may dispose of or divert a portion of that land to an
10 electric public utility for the construction and operation of an
11 electric power line, provided:

12 (1) the preserved farmland is already subject to an existing
13 utility easement held by the electric public utility for the operation
14 of an existing power line;

15 (2) the portion of preserved farmland to be disposed of or
16 diverted is adjacent to the existing utility easement, except as
17 provided in the bill;

18 (3) the electric public utility obtains a determination of public
19 need or benefit from PJM Interconnection, L.L.C. (PJM), or the
20 Board of Public Utilities (BPU);

21 (4) the electric public utility provides compensation to the
22 owner of the preserved farmland and to the owner of the
23 development easement, as provided in the bill;

24 (5) the portion of preserved farmland disposed of or diverted is
25 the minimum width necessary to meet federal and State safety
26 standards;

27 (6) the construction and operation of the power line will not
28 interfere with use of the remaining area of the preserved farmland
29 for agricultural production;

30 (7) construction and operation of the power line will not have an
31 adverse impact on the soil, water resources, air quality, or other
32 natural resources of the preserved farmland or surrounding area;

33 (8) the electric public utility obtains all other necessary permits
34 and approvals that may be required by federal, State, or local law,
35 rule, regulation, or ordinance;

36 (9) upon completion of construction of the power line, the
37 electric public utility restores all land disturbed by the construction
38 as nearly as possible to its pre-construction condition, and returns
39 all land not necessary for the operation of the power line to the
40 owner for agricultural use; and

41 (10) the portion of preserved farmland not subject to the disposal
42 or diversion remains an agriculturally viable parcel, in the farmland
43 preservation program.

44 An electric public utility seeking to construct a power line on
45 preserved farmland would first have to obtain a determination from
46 PJM or the BPU that the power line would: (1) fulfill a compelling
47 public need by mitigating a hazard to the public health, safety, or
48 welfare; or (2) yield a significant public benefit by improving the

1 delivery of essential services to the public. Once this determination
2 is obtained, the person seeking to dispose of or divert a portion of
3 preserved farmland, together with the electric power utility, would
4 have to apply for and obtain the approval of the State Agriculture
5 Development Committee (SADC). The SADC, in consultation with
6 the owner of the development easement, would grant the approval
7 if: (1) it finds that all of the requirements above have been met; and
8 (2) after weighing all of the competing public interests presented by
9 the proposed power line, it finds that the public benefit of the
10 project outweighs any impacts to preserved farmland.

11 As a condition of its approval, the SADC could establish the
12 compensation to be paid by the electric public utility to the owner
13 of the development easement. Such compensation could include
14 eligible replacement land, farmland improvements on the remaining
15 parcel of preserved farmland or on other preserved farms, dedicated
16 funds for the acquisition of farmland preservation development
17 easements, or other compensation to be reasonably established by
18 the SADC. Any compensation approved by the SADC would
19 ensure that there is no net loss of preserved farmland in the State
20 caused by the disposal or diversion. Owners of preserved farmland
21 would be free to negotiate compensation for the disposal or
22 diversion with the electric public utility. That compensation, at a
23 minimum, must equal the fair market value of the disposal or
24 diversion of land as if the land were not designated as preserved
25 farmland.

26 The SADC, in consultation with the owner of the development
27 easement, the Department of Environmental Protection, and the
28 BPU, could approve the construction of a power line on a portion of
29 preserved farmland that is not adjacent to the existing utility
30 easement upon a demonstration of hardship by the electric public
31 utility. The SADC may also approve the realignment of an existing
32 power line upon a showing of hardship by the electric public utility.